IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13911 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAMESHCHANDRA GIRJASHANKER JOSHI

Versus

SHANTILAL CHHAGANLAL SONI

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Appearance:

1. Special Civil Application No. 13911 of 2004

MR ANSHIN H DESAI for Petitioner No. 1

MR NIRAV C THAKKAR for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 19/10/2004

ORAL JUDGEMENT

RULE. Mr.N C Thakkar learned advocate waives service of rule on behalf of the respondent. With the consent of learned counsel for the parties, the matter is taken up for hearing today.

1. The petitioner herein has preferred this petition in order to quash and set aside the order dated 30/09/2004 passed in Misc. Civil Application No.78 of 2003 by the learned Joint District & Sessions Judge, Jamnagar, at Annexure-A to the petition.

2. Mr.A H Desai learned advocate for the petitioner has contended that it was on account of delay on the part of the Advocate that the proceedings went on ex-parte, and therefore, delay had occurred. He has contended that the trial Court had not looked into the reasons which were assigned by the petitioner for the said delay.

3. Mr.Desai for the petitioner has relied upon a decision of the Apex Court in the case of Collector, Land Acquisition, Anantnag and another v. Mst.Katiji and others reported in A.I.R. 1987 S.C., p.1353. He has contended that in view of law laid down by the Apex Court in the said decision, the trial Court ought to have condoned the unexplained delay of 58 days out of the total delay of 179 days.

4. Mr.N C Thakkar learned advocate for the respondent has contended that this Court under Article 227 of the Constitution of India should not interfere in this petition, in view of the fact that no jurisdictional error has been committed by the trial Court. He has further contended that apart from the above, the said delay of 58 days has not been explained properly, and therefore, the order passed by the trial Court is just and proper.

5. I have heard learned counsel for the parties. Having gone through the averments made in the petition and the order of the trial Court, I am of the opinion that the Appellate Court ought to have condoned the unexplained delay of 58 days, in view of the decision of the Apex Court in Collector, Land Acquisition, Anantnag and another v. Mst.Katiji case (supra) and should have decided the matter on merits.

6. In the result, the petition is allowed. The order of the trial Court dated 30/09/2004 passed in Misc. Civil Application No.78 of 2003 is quashed and set aside. The unexplained delay of 58 days caused in filing the appeal is condoned. The Appellate Court is directed to hear the appeal of the petitioner afresh within a period of three months from the date of receipt of writ of this order and to dispose it of as expeditiously as possible. Rule is made absolute accordingly with no order as to

costs.

(K. S. Jhaveri, J.)

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